

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
TESTAMENTARY SUIT NO.2 OF 2003
IN
TESTAMENTARY PETITION NO.381 OF 2002

Ashokkumar Sardarilal Agarwal & Anr. : Plaintiffs.
Versus
Vijay S Agarwal : Defendant.

Mr.S.V.Doijode i/by Doijode & Associates for the Plaintiffs
Mr. Mohan Rane i/by Vigil Juris for the Defendant.

CORAM : R.M.SAVANT, J
DATED : DECEMBER 05, 2008

P.C.

1. Pursuant to the order dated 11th March 2008 passed in Notice of Motion No.137 of 2007 filed in the above Suit an Architect on the Panel of this Court was appointed. The Architect has submitted his Report dated 25th August 2008 in respect of the work which is contemplated under the said order dated 11th March 2008. The Architect has also given a rough estimate of the charges for the work which will have to be carried out, which is to the tune of Rs.91,300/- and the professional charges of the Architect are Rs.10,000/- lump

sum plus Service Tax.

2. On behalf of the Defendant a contention is now sought to be raised that the Defendant never consented to the work being carried out as contemplated in the order dated 11th March 2008, and also the manner in which the work is to be carried out in terms of the Architect's Report. In the said order dated 11th March 2008 it has been recorded that in order to ensure that none of the parties are inconvenienced and they occupy the flat peacefully, it is necessary to issue certain directions. Paragraph 13 of the said order dated 11th March 2008 is material in the context of the contentions raised on behalf of the Defendant. It is recorded in the said Paragraph No.13 thus, "that the drawing and dining room admeasures approximately 22 ft x 19 ft, in addition thereto is a balcony. The said room has two entrances, it is in the interest of both the parties that a temporary wooden partition is put up along with the length of the room and Plaintiff No.2 and the Defendant use separate portions exclusively at this stage. The parties have agreed to try and do so by consent. However, in the event of their being unable to do so within four weeks

from today, they shall make an application to the Prothonotary and Senior Maser, who shall on such application being made appoint an Architect from the panel of the Court Receiver. The Architect shall visit the suit premises and file a report as to the most convenient manner of dividing the drawing and dinning room and balcony equally as fa as possible. It is agreed that upon such division, the Defendant shall use the portion towards bedroom No.1 and Plaintiff No.2 shall use the portion towards bedroom No.2 ”.

The costs of the Architect and the partition shall be shared equally between Plaintiff No.2 and the Defendant initially. The same shall be subject to final orders at the hearing of the suit. The parties agree and undertake to pay the costs of the Architect as above.

3. In view of what has been contemplated under the said Paragraph No.13, in the Architect Reports division of the balcony is to be carried out by removing the Air Conditioner which is below the window. It appears that originally there were two doors to the balcony one of the doors was converted into a window and an Air Conditioner

has been fixed. Shri Doijode, the learned counsel appearing for the Plaintiff No.2, has drawn the Court's attention to the photographs in respect of a flat which is below the flat in question which discloses that there are two doors to the balcony. The Defendant has an objection that certain structural changes in the matter of making a door would have to be carried out if the Architect Report is to be implemented.

Since there was already a door which has been enclosed, in my view, the work can be carried out in a manner which would not involve any structural changes. Ultimately this is a temporary arrangement so that the Plaintiff No.2 and the Defendant co-exist peacefully.

4. Having once agreed to the Architect being appointed to over see the division of the drawing room, dinning room and the balcony, it does not befit the Defendant to go back on the said consent and now raise various objections to the work being carried out. The learned counsel for the Plaintiff No.2 Shri Doijode fairly went

to the extent of offering either of the portions of the living room which would stand divided, after the partition is put up. But the said offer is not acceptable to the Defendant. In fact the learned counsel for the Plaintiff No.2 also offered to take the portion with the window and the Air Conditioner, if the objection of the Defendant was to the removal of window and Air Conditioner. However, the same is also not acceptable to the Defendant.

5. It is also contended on behalf of the Defendant that the charges contemplated under the Architect's Report are exorbitant. The learned counsel for the Plaintiff No.2 has drawn my attention to the correspondence, which the advocate of the Plaintiff No.2 had entered into with the Defendant's Advocate, which discloses that the Plaintiff had even suggested a Contractor by name of Rijpal Mistry. However, the same was also not accepted by the Defendant. It appears that the Defendant is only interested in putting spokes in the wheels of the work being carried out pursuant to the Architect's Report and is not interested in amicably resolving the said issue.

6. In that view of the matter, considering the intent with which the order dated 11th March 2008 was passed, the Architect's Report dated 9th June 2008 along with Report dated 25th August 2008 is accepted. The parties would see to it that the said report is implemented in terms of the directions contained in the said order dated 11th March 2008 including the payment of the expenses and the fees of the Architect with Service Tax.

7. As a consequence of the work being carried out the parties would remove their respective belongings from the portion which has gone to the share of the other party. The work to commence within a period of six weeks from date.

[R.M.SAVANT, J]